



International Tribunal for the
Prosecution of Persons
Responsible for Serious Violations of
International Humanitarian Law
Committed in the Territory of the
Former Yugoslavia since 1991

Case No. IT-04-74-AR73.12
Date: 5 December 2008
Original: English

IN THE APPEALS CHAMBER

Before: Judge Mohamed Shahabuddeen, Presiding
Judge Mehmet Güney
Judge Fausto Pocar
Judge Andréia Vaz
Judge Theodor Meron

Registrar: Mr. Hans Holthuis

Decision of: 5 December 2008

PROSECUTOR

v.

**JADRANKO PRLIĆ
BRUNO STOJIĆ
SLOBODAN PRALJAK
MILIVOJ PETKOVIĆ
VALENTIN ĆORIĆ
BERISLAV PUŠIĆ**

PUBLIC

**DECISION ON SLOBODAN PRALJAK'S APPEAL OF THE TRIAL
CHAMBER'S 13 OCTOBER 2008 ORDER LIMITING THE TRANSLATION
OF DEFENCE EVIDENCE**

The Office of the Prosecutor:

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Ms. Vesna Alaburić and Mr. Nicholas Stewart for Milivoj Petković
Ms. Dijana Tomašegović-Tomić and Mr. Dražen Plavec for Valentin Ćorić
Mr. Fahrudin Ibrišimović and Mr. Roger Sahota for Berislav Pušić

1. The Appeals Chamber of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia Since 1991 (“Appeals Chamber” and “Tribunal”, respectively) is seized of an appeal by Slobodan Praljak (“Praljak”)¹ against an order issued by Trial Chamber III (“Trial Chamber”) on 13 October 2008,² in which the Trial Chamber set a limit on the number of translated pages for the preparation of Praljak’s defence case.

I. BACKGROUND

2. On 27 September 2007, the Trial Chamber issued a scheduling order, in which it ordered, pursuant to Rule 65ter(G) of the Tribunal’s Rules of Procedure and Evidence (“Rules”), Praljak and his co-accused (collectively, “Accused”) to file, by 21 February 2008, the list of exhibits they intended to present in support of their case and to disclose to the Office of the Prosecutor (“Prosecution”) copies of the exhibits in question, translated into English as needed.³ On 24 January 2008, Praljak filed a motion requesting the Trial Chamber to order the Registry to take steps to translate documents deemed necessary for the presentation of his case.⁴ On 28 January 2008, the Trial Chamber rendered a decision, in which it decided that the Accused were to file the lists of exhibits and witnesses in accordance with Rule 65ter(G) of the Rules on 31 March 2008.⁵ The same day, the Trial Chamber requested the Registry to comment on the Motion. Both the Registry and Praljak filed several submissions addressing this issue.⁶

3. On 17 March 2008, a hearing was held pursuant to Rule 65ter of the Rules, during which the issue was discussed.⁷ On 19 March 2008, the Trial Chamber issued the “Order on Slobodan Praljak’s Motion Concerning the Translation of Documents”, in which it granted Praljak an

¹ Slobodan Praljak’s Appeal of the Trial Chamber’s 13 October 2008 Decision Limiting the Translation of Defence Evidence, 10 November 2008 (“Appeal”).

² *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Order on Slobodan Praljak’s Motion Regarding the Translation of Documents, 13 October 2008 (“Impugned Order”).

³ *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Scheduling Order, 27 September 2007.

⁴ *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Slobodan Praljak’s Motion Requesting that the Trial Chamber Order the Registrar to Facilitate Translations (Confidential), 24 January 2008.

⁵ T. 18 January 2008, p. 26871.

⁶ *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Registry Submission Pursuant to Rule 33 (B) of the Rules on Slobodan Praljak’s Motion Requesting Translations, 12 February 2008; *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Slobodan Praljak’s Request for Leave to Reply to the Registry’s Response to Praljak’s Motion Requesting Order to Facilitate Translation and Praljak’s Reply to the Registry’s Submission, 14 February 2008; *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Supplemental Information Regarding Praljak’s Motion to Order the Registrar to Facilitate Translations, 28 February 2008; *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Registry Submission Pursuant to Rule 33 (B) Providing Supplemental Information Related to Praljak’s Request for Translations, 3 March 2008. See also *Prosecutor v. Jadranko Prlić et al.*, Case No. JT-04-74-T, Notice Regarding Registry’s Submission of Supplemental Information on the Motion to Order the Registrar to Facilitate Translations, 4 March 2008.

exception to the requirement of producing translations of the documents on the exhibit list on 31 March 2008 and instead ordered Praljak to provide a precise translated summary of the contents of each document on the list and to classify the documents according to their subject matter.⁸ Following this ruling, on 31 March 2008, Praljak filed a submission containing the lists of witnesses, exhibits, and expert witnesses he intended to present during the course of his case.⁹

4. On 16 May 2008, the Trial Chamber issued the “Order on Slobodan Praljak’s Motion Concerning the Translation of Documents”, in which it ordered Praljak to promptly notify the Registry of the precise documents that he wanted translated and their order of priority (“Order of 16 May 2008”).¹⁰ It further limited the amount of material which Praljak was entitled to have translated by the Registry translation services to 1810 standard United Nations pages.¹¹ Pursuant to a request made by Praljak on 22 May 2008,¹² the Trial Chamber, on 11 June 2008, declined to reconsider the Order, but granted certification to appeal.¹³

5. On 4 September 2008, the Appeals Chamber issued the “Decision on Slobodan Praljak’s Appeal against the Trial Chamber’s Decision of 16 May 2008 on Translation of Documents”, in which it granted the appeal in part with respect to the arguments concerning the calculation of pages and the methodology adopted in the Order of 16 May 2008 resulting in violations of Article 21 of the Tribunal’s Statute (“Statute”) and Rule 82(A) of Rules by denying Praljak’s right to an individualized assessment of the translation resources to be allocated to him. The Appeals Chamber remanded the Order to the Trial Chamber for reconsideration in light of the errors it had identified.¹⁴

6. On 13 October 2008, the Trial Chamber issued the Impugned Order, in which it decided that the Praljak Defence could request the Conference and Language Services Section (“CLSS”) to translate an additional 1500 standard United Nations pages, and requested the Praljak Defence to identify and send to CLSS no later than 7 November 2008 the documents it wished to have

⁷ T. 17 March 2008, pp. 27340-27333.

⁸ *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Order on Slobodan Translation of Documents, 19 March 2008, p. 7.

⁹ *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Slobodan Praljak’s Submission Pursuant to Rule 65 *ter*, 31 March 2008 (“65*ter* List”).

¹⁰ *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, *Ordonnance portant sur la demande de Slobodan Praljak relative à la traduction de documents*, 16 May 2008, p. 10.

¹¹ *Ibid.*

¹² *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Slobodan Praljak’s Request for Reconsideration or in the Alternative for Certification to Appeal the Trial Chamber’s 16 May 2008 Decision on the Translation of Defence Evidence, 22 May 2008.

¹³ *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Decision on Praljak Defence Request for Reconsideration or for Certification to Appeal the Order of 16 May 2008, 11 June 2008.

¹⁴ *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-AR73.9, Decision on Slobodan Praljak’s Appeal against the Trial Chamber’s Decision of 16 May 2008 on Translation of Documents, 4 September 2008 (“Decision of 4 September 2008”), para. 30.

translated, respecting the maximum limit of 1500 standard United Nations pages, and also to inform CLSS of the order of priority of the translation of the documents identified.¹⁵ It further requested CLSS to translate the documents identified by the Praljak Defence within the limit of 1500 standard United Nations pages.¹⁶ Pursuant to a request made by Praljak on 20 October 2008,¹⁷ the Trial Chamber, on 4 November 2008, declined to reconsider the Order, but granted the certification to appeal.¹⁸

7. On 10 November 2008, Praljak submitted his Appeal. The Prosecution did not file a response.

II. STANDARD OF REVIEW

8. The Appeals Chamber recalls that decisions relating to the general conduct of trial proceedings are matters that fall within the discretion of the Trial Chamber.¹⁹ The Impugned Order, which limited the quantity of pages that Praljak could submit to the Registry for translation, is such a discretionary decision to which the Appeals Chamber must accord deference. This deference is based on the recognition by the Appeals Chamber of “the Trial Chamber’s organic familiarity with the day-to-day conduct of the parties and practical demands of the case”.²⁰ In order to successfully challenge a discretionary decision, a party must demonstrate that the Trial Chamber has committed a “discernible error” resulting in prejudice to that party.²¹ The Appeals Chamber will only overturn a Trial Chamber’s discretionary decision where it is found to be (1) based on an incorrect interpretation of governing law; (2) based on a patently incorrect conclusion of fact; or (3) so unfair or unreasonable as to constitute an abuse of the Trial Chamber’s discretion.²² The Appeals Chamber will also consider whether the Trial Chamber has given weight to extraneous or irrelevant

¹⁵ Impugned Order, p. 21.

¹⁶ *Ibid.*

¹⁷ *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Slobodan Praljak’s Request for Reconsideration, or in the Alternative, for Certification to Appeal the Trial Chamber’s 13 October 2008 Decision on the Translation of Defence Evidence, 20 October 2008.

¹⁸ *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Decision on Request for Reconsideration or for Certification to Appeal the Order of 13 October 2008, 4 November 2008.

¹⁹ Decision of 4 September 2008, para. 7, citing *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-AR73.7, Decision on Interlocutory Appeal of the Trial Chamber’s Decision on the Assignment of Defense Counsel, 1 November 2004 (“*Milošević* Decision of 1 November 2004”), para. 9.

²⁰ Decision of 4 September 2008, para. 7, citing *Prosecutor v. Zdravko Tolimir et al.*, Case No. IT-04-80-AR73.1, Decision on Radivoje Miletić’s Interlocutory Appeal Against the Trial Chamber’s Decision on Joinder of Accused, 27 January 2006, para. 4. See also *Milošević* Decision of 1 November 2004, para. 9.

²¹ Decision of 4 September 2008, para. 8, citing *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-AR73.4, Decision on Appeal Against the Trial Chamber’s Decision (No. 2) on Assignment of Counsel, 8 December 2006 (“*Šešelj* Decision of 8 December 2006”), para. 18 (citing *Prosecutor v. Mićo Stanišić*, Case No. IT-04-79-AR65.1, Decision on Prosecution’s Interlocutory Appeal of Mićo Stanišić Provisional Release, 17 October 2005, para. 6).

²² Decision of 4 September 2008, para. 8, citing *Šešelj* Decision of 8 December 2006, para. 18 (citing *Milošević* Decision of 1 November 2004, para. 9).

considerations or has failed to give weight or sufficient weight to relevant considerations in reaching its decision.²³

III. DISCUSSION

9. Praljak submits that, by establishing a 1500 standard United Nations pages limit on the number of pages he may request the Registry to translate into a UN working language, the Impugned Order violates Article 21(4)(b) of the Statute and Rule 82(A) of the Rules, as well as Articles 21(2), 21(4)(e), 20(1) and 21(4)(c) of the Statute and the principle of equality of arms.²⁴ Praljak accordingly requests the Appeals Chamber to reverse the Trial Chamber's limit on the number of pages he is entitled to request for translation.²⁵ He also seeks an order requiring the Registry to continue to provide translations at the rate it has provided over the last two months until the beginning of the Praljak Defence.²⁶ Alternatively, he requests an increase in the time to present his case.²⁷

A. Ground 1: Alleged violation of Article 21(4)(b) of the Statute

10. Praljak submits that the limitation on translation facilities violates his right under Article 21(4)(b) of the Statute to "adequate time and facilities for the preparation of the defence".²⁸ In support of this contention, he argues that the Decision of 4 September 2008 affirmed, and the Impugned Order concedes, that Article 21(4)(b) "protects the right of the Accused to translation services".²⁹ He contends that the translation facilities provided to the Praljak Defence are inadequate due to the "practical effect" of the Impugned Order, which is that "over 80%" of witness statements intended to be tendered under Rules 92*bis* and 92*ter* of the Rules would remain untranslated and not admitted into evidence.³⁰

11. The Appeals Chamber recalls that it is within the Trial Chamber's discretion to limit the translation resources made available to the parties provided that the limitation is consistent with the statutory rights of an accused.³¹ In the Impugned Order, the Trial Chamber stated that it assessed

²³ Decision of 4 September 2008, para. 8, citing *Prosecutor v. Rasim Delić*, Case No. IT-04-83-AR73.1, Decision on Rasim Delić's Interlocutory Appeal Against Trial Chamber's Oral Decisions on Admission of Exhibits 1316 and 1317, 15 April 2008, para. 6; *See also Šešelj* Decision of 8 December 2006, para. 18; *Milošević* Decision of 1 November 2004, para. 9; *Prosecutor v. Slobodan Milošević*, Case Nos. IT-99-37-AR73, IT-01-50-AR73, and IT-01-5 1-AR73, Reasons for Decision on Prosecution Interlocutory Appeal from Refusal to Order Joinder, 18 April 2002, para. 5.

²⁴ Appeal, para. 2.

²⁵ Appeal, para. 94.

²⁶ Appeal, para. 94.

²⁷ Appeal, para. 94.

²⁸ Appeal, paras 36-46.

²⁹ Appeal, paras 38-39, citing Decision of 4 September 2008, paras 26, 27 and 30 and Impugned Order, p. 21.

³⁰ Appeal, para. 42.

³¹ Decision of 4 September 2008, para. 25.

the needs for the presentation of Praljak's case following the guidelines set out in the Decision of 4 September 2008.³² Having made a "*prima facie* examination" of the witness statements intended to be admitted under the Rules, the Trial Chamber concluded that "a good part" of the evidence deals with points having little or no connection with the present case or is redundant,³³ and a very large number of statements deal with the same facts, which would be excessive.³⁴ It finds that it is incumbent on Praljak to make a choice between the 194 witnesses³⁵ and that Praljak should be able to establish an order of priority based on those witnesses who are likely to testify about events alleged in the Indictment and who are competent and credible, particularly owing to their role and functions during the alleged facts.³⁶ With regard to the list of exhibits, the Trial Chamber found that the information provided did not allow it to make a *prima facie* assessment of the relevance and probative value of the documents for Praljak's defence case.³⁷ Nonetheless, the Trial Chamber concluded that even a "superficial examination" shows that a large number of documents or numerous book extracts do not seem relevant for the purpose of Praljak's defence case.³⁸

12. Praljak submits that, contrary to the finding in the Impugned Order, all the witness statements and exhibits he wishes to have translated are relevant and necessary.³⁹ He contends that the Impugned Order seems to limit the notion of relevancy to evidence regarding events focused on by the Prosecution, whereas evidence disproving the Prosecution's basis of liability is also relevant and connected to the trial.⁴⁰ He further avers that, when in doubt, the Trial Chamber must err on the side of allowing the translation.⁴¹

13. The Appeals Chamber recognises that the Trial Chamber is well placed to assess whether translation resources are justifiably needed by the Defence. While the Appeals Chamber considers that evidence may be relevant to the determination of the liability of an accused although not directly dealing with the events alleged in the Indictment, it finds that the Trial Chamber did not restrict the notion of relevancy in this sense, but merely suggested a priority for the translation of witness statements based on such considerations.

³² Impugned Order, para. 36.

³³ Impugned Order, para. 40. The Trial Chamber notes that several witnesses are called to testify with regard to Praljak's good conduct or positive influence, but in periods or places outside the scope of the Indictment of 11 June 2008. Impugned Order, paras 41 and 43.

³⁴ Impugned Order, para. 42.

³⁵ Impugned Order, para. 44.

³⁶ Impugned Order, para. 44.

³⁷ Impugned Order, para. 50.

³⁸ Impugned Order, para. 51.

³⁹ Appeal, paras 70-74.

⁴⁰ Appeal, para. 72.

⁴¹ Appeal, para. 73.

14. Praljak emphasizes that in its “Decision Allocating Time to the Defence to Present Its Case” of 25 April 2008⁴² the Trial Chamber restricted him from presenting evidence through oral evidence, and thereby necessitated a heavier reliance on written evidence. The combined effect of this Decision and the Impugned Order, he contends, is that the “Praljak Defence is now restricted from presenting its evidence both through oral testimony and through written evidence”.⁴³ He further submits that the Praljak Defence followed the Trial Chamber’s “repeated encouragement to minimize the number of *viva voce* witnesses”, which means that it cannot “compensate for untranslated evidence with oral evidence”.⁴⁴

15. The Appeals Chamber recalls that:

[...] it is not necessarily inconsistent for the Trial Chamber to limit both the time available for oral testimony and the translation resources available for written testimony if the combined limitations do not hinder the capacity of the accused to present an adequate defence. The key requirement under Article 21(4)(b) of the Statute is that the assessment of each measure — such as the limitation on translation services — must be made in the context of the totality of the other measures taken, including the limitations on oral testimony [...] Therefore, in reconsidering the allocation of translation resources, the Trial Chamber should give due weight to Praljak’s right to a fair hearing pursuant to Article 21(2) and (4)(b) of the Statute, particularly in light of the restrictions imposed on the amount of oral evidence Praljak may present.⁴⁵

16. In the Impugned Order, the Trial Chamber took into consideration the fact that it had already imposed a restriction on the presentation of Praljak’s evidence by reducing the number of hours to present his case, and that Praljak had been encouraged to make use of Rules 92*bis* and 92*ter* witness statements.⁴⁶ However, the Trial Chamber found that it would not infringe upon Praljak’s rights recognised in Article 21(4)(e) of the Statute by limiting the number of translation pages so as to exclude witness statements that are outside the scope of the Indictment or redundant.⁴⁷

17. Following the remanding of the Order of 16 May 2008 and the renewed assessment carried out by the Trial Chamber, the Appeals Chamber finds that the Trial Chamber acted within its discretion and defers to it in respect of the outcome of its assessment that many documents in the Rule 65*ter* List do not appear to be relevant. By not pointing to any specific evidence that would be excluded by reason of the Impugned Order, Praljak fails to demonstrate how the limitation on the number of translated pages would violate his right to adequate time and facilities for the preparation

⁴² *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Decision Allocating Time to the Defence to Present Its Case, 25 April 2008, pp. 10-12.

⁴³ Appeal, paras 43 and 58.

⁴⁴ Appeal, para. 44.

⁴⁵ Decision of 4 September 2008, paras 26-27.

⁴⁶ Impugned Order, paras 57 and 59.

⁴⁷ Impugned Order, para. 57.

of the defence. The Appeals Chamber is thus not satisfied that the Trial Chamber committed a discernible error in this regard.

B. Ground 2: Alleged violation of Rule 82(A) of the Rules

18. Praljak submits that the Impugned Order violates Rule 82(A) of the Rules by establishing what constitutes “excessive” translation requirements based on a comparison of the translation requests of his co-Accused.⁴⁸ He maintains that the basic rationale of the Impugned Order is that he failed to demonstrate why his translation needs exceed those of his co-Accused.⁴⁹ Praljak argues that this rationale is flawed because it “neglects the fact” that co-Accused Prlić has been given more time to present his oral evidence, thus lessening his need for translations.⁵⁰ The rationale also misconstrues the Decision of 4 September 2008, he submits, by treating the limitation on comparison of resources allocated to co-defendants to when it is “relevant to ensure the fair treatment of each defendant”⁵¹ as a “general licence”.⁵² He argues that in this case, the comparison between the Accused is not relevant because there is no fact, allegation or reason to indicate that the denial of translation resources to Praljak will benefit the co-Accused.⁵³ He points out that as of 18 October 2008, the other Accused’s translation requirements have been satisfied and that the continued provision of translation services to him will not affect them.⁵⁴

19. In the Impugned Order, the Trial Chamber finds that the number of pages requested by Praljak “greatly exceeds” the number of pages that CLSS will have translated for each of the other Accused in the present case.⁵⁵ While the Trial Chamber recognises that each Defence team has its own defence strategy, it finds that “needs as excessive as those of the Praljak Defence must be justified and based on convincing arguments”, which it finds Praljak has failed to demonstrate.⁵⁶

20. The Appeals Chamber considers that while the Trial Chamber did use the numbers of pages translated for Accused Prlić as a comparative reference point, it nonetheless based its conclusion that Praljak’s translation request was excessive mainly on its assessment that it was not necessary to have translated all of the exhibits and all of the witness statements on Praljak’s Rule 65ter List for

⁴⁸ Appeal, paras 48 and 50.

⁴⁹ Appeal, para. 48.

⁵⁰ Appeal, para. 51.

⁵¹ Decision of 4 September 2008, para. 20.

⁵² Appeal, para. 49.

⁵³ Appeal, para. 49.

⁵⁴ Appeal, para. 49.

⁵⁵ Impugned Order, para. 55. The second highest number of translated pages requested by an Accused was 4334 to 4461 pages requested by Accused Prlić. Impugned Order, para. 54.

⁵⁶ Impugned Order, para. 55.

the presentation of his defence case.⁵⁷ Accordingly, the Appeals Chamber finds that the Trial Chamber did not violate Rule 82(A) of the Rules.

C. Ground 3: Alleged violations of Article 21(2) and (4)(e) of the Statute

21. Praljak submits that the Impugned Order violates the right to a fair hearing under Article 21(2) of the Statute because he is unable to properly present his case.⁵⁸ This, in his view, raises the possibility of a miscarriage of justice.⁵⁹ Praljak claims that an absolute bar on translation facilities – which he refers to as a “Hard Limit” – particularly where the limit constitutes “a fraction of the consistently expressed needs of an accused”, is unprecedented, and has never been confirmed by the Appeals Chamber.⁶⁰ He submits that the Impugned Order has “no individualized calculation” explaining how the reasoning leads to the specific limitation of 1500 standard United Nations pages, amounting to a restriction of 51 to 67 per cent of his asserted translation needs. The Impugned Order, he argues, fails to justify “such a radical denial of translation facilities” and thereby violates the right to a reasoned decision and to present the Accused’s case as guaranteed by Article 21(4)(e) of the Statute.⁶¹

22. The Appeals Chamber recognises that a “Hard Limit” on the translation resources of Praljak will force him to further revise and refine his defence strategy. It does not, however, necessarily imply that Praljak will be unable to fairly and effectively present his case within that translation limit. The question before the Appeals Chamber is thus whether the Trial Chamber committed a discernible error in determining that the limitation of 1500 translated standard United Nations pages would still allow Praljak a fair opportunity to present his case. Furthermore, the Appeals Chamber considers that, while it may be that, in light of the evidence presented to date, the limitation of 1500 translated standard United Nations pages still permits Praljak to present his case, the Trial Chamber must specifically consider whether this is indeed so.⁶²

23. In the Impugned Order, the Trial Chamber finds that “the rights of the Accused Praljak will be respected by granting him the translation of an additional 1500 standard United Nations pages”.⁶³ This would give him a total of 4307 standard United Nations pages.⁶⁴ The Appeals

⁵⁷ Impugned Order, para. 55: “The Praljak Defence has made no real effort to explain to the Chamber why the documents on its exhibit list are necessary for the presentation of its case. The witness statement summaries submitted on 31 August 2008 have also not convinced the Chamber of the need to translate all of the witness statements”.

⁵⁸ Appeal, paras 54-82.

⁵⁹ Appeal, para. 60.

⁶⁰ Appeal, para. 62.

⁶¹ Appeal, para. 80.

⁶² See *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-AR73.4, Decision on Prosecution Appeal Concerning the Trial Chamber’s Ruling Reducing Time for the Prosecution Case, 6 February 2007 (“*Prlić et al.* Decision of 6 February 2007”), para. 16.

⁶³ Impugned Order, para. 60.

Chamber notes that, in the view of the Trial Chamber, this would give Praljak “sufficient resources” to present his case.⁶⁵ The Trial Chamber appears to reach the figure of 1500 additional pages by also taking into account that, since CLSS had indicated in the Registry Submission of 3 March 2008 that it is able to translate 200 standard United Nations pages per month for Praljak and that the Praljak Defence case will not commence before April 2009, CLSS would be able to translate about 1400 standard United Nations pages before the commencement of the Praljak Defence case.⁶⁶ The Impugned Order as a whole shows that the Trial Chamber took into consideration the specific needs of the Praljak Defence in ascertaining that a limitation of 1500 standard United Nations pages of additional translations would allow him to present his defence case. Praljak has failed to demonstrate that this limit on translations would cause him prejudice. Accordingly, the Appeals Chamber finds that the Trial Chamber did not commit a discernible error in establishing a limit of 1500 standard United Nations pages for translation for the Praljak Defence.

24. However, the Appeals Chamber considers that, because the Trial Chamber was unable to make more than a “superficial” examination of the exhibit summaries in the Rule 65ter List,⁶⁷ the serious limitation of translation resources at this stage of the process *may* have a prejudicial effect upon Praljak. Furthermore, it would appear that, since 18 October 2008, the translation capacity of the CLSS has increased for Praljak since the translation requests of the other Accused have been fulfilled.⁶⁸ The Trial Chamber will need to continue monitoring the situation in order to ensure a fair trial as Praljak’s case approaches. The Appeals Chamber notes that it would not be appropriate to limit Praljak’s access to translation resources purely on the capacity restraints of the CLSS.⁶⁹

D. Ground 4: Alleged violations of Articles 20(1) and 21(4)(c) of the Statute

25. Praljak submits that, given that statements submitted pursuant to Rule 92ter of the Rules take far less time than hearing the *viva voce* testimony of witnesses, the “only remedy” for the

⁶⁴ Impugned Order, para. 60. The Trial Chamber estimated the total number of additional translated standard United Nations pages requested by Praljak to be between 3060 and 4652. Accordingly, since he has already received 2807 translated standard United Nations pages as of 31 August 2008, if his translation request was granted in full the complete total of translated standard United Nations pages would be 5867 to 7459. Impugned Order, paras 54 and 34. The Trial Chamber noted that in Praljak’s submission, the number of standard United Nations pages of pending translation would be obtained by multiplying an original page in B/C/S by the coefficient 0.628, while the Registry had indicated that in the present case, the number of standard United Nations pages equals more or less the same number of original pages. Impugned Order, paras 27-28.

⁶⁵ Impugned Order, para. 60.

⁶⁶ Impugned Order, para. 58.

⁶⁷ Impugned Order, para. 50.

⁶⁸ *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Registry Submission Pursuant to Trial Chamber’s Order Requesting Information Dated 11 September 2008, 16 September 2008, para. 9 (“CLSS [...] expects to complete the Prlić Defence translation requests by 18 October 2008. Deadlines for documents submitted by other Defence teams vary from August to September 2008”). See also para. 11 (“Since 01 June 2008 CLSS has been providing the Defence in the Prlić et al case with approximately 670 standard United Nations pages of translation per month”).

⁶⁹ The Appeals Chamber notes that Praljak is able to procure translations from other translation service providers.

restriction on translation facilities would be delays in the trial or an expansion of time for the Accused's case.⁷⁰ In his submission, the trial will be more expeditious if all parties have translated material available as soon as possible. He further contends that if he is unable to use the translation facilities, he may be forced to request delays in his trial in order to organise for partial translations on short notice, which may in turn provoke objections from the other parties for lack of notice, leading to further delays.⁷¹ Therefore, he argues that the Impugned Order must be quashed in part in order to prevent a violation of his right to a speedy trial.⁷²

26. Praljak submits that the Trial Chamber's reliance on Rule 90(F) of the Rules to justify restricting translation facilities is misplaced,⁷³ noting that the Rule covers the mode and order of presenting evidence, not the translation of evidence and that the two objectives of the Rule (to ascertain the truth and to avoid needless consumption of time) are not served by the Impugned Order.⁷⁴ With regard to the first objective, he argues that the denial of translation facilities in no way helps in the ascertainment of the truth because evidence would be barred without any consideration of its relevance and weight.⁷⁵ In terms of the second objective, he contends that by denying the means to present written testimony, this increases the need for oral testimony and thereby increases the length of the trial.⁷⁶

27. The Trial Chamber explicitly considered the right to a fair and expeditious trial in the Impugned Order. It found that a legitimate concern in the present trial is to ensure that the proceedings do not suffer from undue delays and that the trial is completed within a reasonable time.⁷⁷ It further found that, absent the judicious exercise of the Trial Chamber's discretion to control the mode of presenting evidence under Rule 90(F) of the Rules "including control of the translation resources allocated to an accused", an accused before the Tribunal "could paralyse the proceedings by requesting the translation of an excessive number of documents".⁷⁸ The Trial Chamber noted that Praljak's translation requests have led to lengthy disputes with the CLSS.⁷⁹ It considered that it was compelled to impose a limit on the number of pages that Praljak may request

⁷⁰ Appeal, para. 85.

⁷¹ Appeal, para. 87.

⁷² Appeal, para. 87.

⁷³ Appeal, para. 78.

⁷⁴ Appeal, para. 75.

⁷⁵ Appeal, para. 76. Praljak also contends that adequate translation facilities are required "to provide a fair and complete picture of the events at issue." Appeal, para. 60.

⁷⁶ Appeal, para. 77.

⁷⁷ Impugned Order, para. 52.

⁷⁸ Impugned Order, para. 52.

⁷⁹ Impugned Order, para. 53.

for translation in order to avoid excessive delay which would infringe the rights of all the Accused.⁸⁰

28. The Trial Chamber's duty to ensure the fairness and expeditiousness of proceedings will often entail a delicate balancing of interests, particularly in a trial of this scope and complexity.⁸¹ In limiting translation resources of an accused in such a case, the Trial Chamber is required to ensure that the allocation of translation facilities is reasonably sufficient in light of the complexity and number of issues to be litigated.⁸² The Impugned Order shows that the Trial Chamber was well aware of the defence needs of Praljak in light of the scope and complexity of the trial and was expressly mindful of the need to ensure that the trial did not suffer undue delay. Praljak does not show which evidence would be barred by the limitation on translation, or that such a limitation would lead to undue delay. The Appeals Chamber agrees with the Trial Chamber that ensuring that the proceedings do not suffer from undue delay is a legitimate concern, and finds no error in the Trial Chamber's reliance on Rule 90(F) of the Rules.

E. Ground 5: Alleged violation of the principle of equality of arms

29. Under this ground, Praljak requests the Trial Chamber to evaluate the need for translation services in light of "the extremely broad, complicated and amorphous indictment to which the Accused must respond within an extremely limited period of time".⁸³ He also notes that the Prosecution is not faced with such a "procedural bar"; that is, the Prosecution does not have to prove the worth of its evidence before being able to receive facilities for translation.⁸⁴ He submits that the Trial Chamber "cannot simultaneously prevent the presentation of evidence orally and in written form without violating the equality of arms" because the Prosecution is not subject to similar restrictions.⁸⁵

30. The Appeals Chamber considers that this submission is vaguely argued and misunderstands the principle of the equality of arms. It recalls that the equality of arms does not mean equality of resources, but rather that each party must have a reasonable opportunity to defend its interests under conditions which do not place him at a substantial disadvantage vis-à-vis his opponent.⁸⁶ The Appeals Chamber is not persuaded that the 1500 standard United Nations pages limitation on

⁸⁰ Impugned Order, paras 56 and 59.

⁸¹ *Prlić et al.* Decision of 6 February 2007, para. 16.

⁸² *Ibid.*

⁸³ Appeal, para. 88.

⁸⁴ Appeal, paras 89-91.

⁸⁵ Appeal, para. 92.

⁸⁶ Decision of 4 September 2008, para. 29, and references cited therein.

additional translation resources places Praljak at a disadvantage vis-à-vis the Prosecution such as to violate this principle.

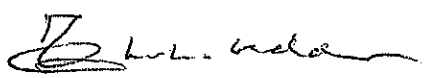
IV. DISPOSITION

31. On the basis of the foregoing, the Appeals Chamber,

DISMISSES the Appeal;

REQUESTS the Trial Chamber to continue to carefully monitor the preparation of Praljak’s case in order to ensure a fair trial.

Done in English and French, the English version being authoritative.



Judge Mohamed Shahabuddeen
Presiding Judge

Dated this fifth day of December 2008
At The Hague
The Netherlands

[Seal of the Tribunal]